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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Price Cap Regulation of)
Local Exchange Carriers) CC Docket No. 93-179
)
Rate-of-Return Sharing)
and Lower Formula Adjustment)

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OPPOSITION TO PETITION FOR RECONSIDERATION

Ameritech¹ submits this opposition to MCI's petition for reconsideration of the Commission's recent Add-Back Order.²

In the Add-Back Order, the Commission concluded that, in calculating a price cap carrier's earnings in a particular calendar year for sharing purposes, the effects of sharing or lower formula adjustment mechanism changes in that year should be removed from the calculations. The Commission concluded that, although add-back "does not constitute a major change to the LEC price cap rules," the add-back rule adopted in the Order "may, as a legal matter, be applied only on a prospective basis."³ The Commission applied the rule first to price cap carriers' 1995 access tariffs in the calculation of sharing resulting from 1994 earnings.

MCI claims that the Commission's failure to apply add-back "to the beginning of price cap regulation" -- i.e., to the 1992 and 1993 annual access filings -- was incorrect. The basis for MCI's argument is that "add-back was the status quo for computation of the LECs' rate of return under rate-of-return regulation" and that "absent any Commission direction to the contrary, therefore, there could be no expectation that the

¹ Ameritech means: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

² In the Matter of Price Cap Regulation of Local Exchange Carriers, Rate of Return Sharing and Lower Formula Adjustment, CC Docket No. 93-179, Report and Order, FCC 95-133 (released April 14, 1995) ("Add-Back Order").

³ Id. at ¶¶ 49-50.

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Commission's existing add-back requirement would have disappeared." MCI concludes that add back "is not a new rule; it is merely a codification of long-standing, and prior to the advent of price cap regulation, unopposed Commission practice."⁴

MCI's arguments, however, ignore the fact that there was a significant dispute as to whether earnings under price cap regulation should be treated the same as earnings under rate-of-return regulation.⁵ At a minimum, one could reasonably argue that refunds of overearnings under rate-of-return regulation -- which are based on the unlawfulness of the underlying rates -- are at least somewhat different from sharing under price caps where rates that are compliant with price cap indexes are presumptively lawful. Therefore, the fact that add-back under rate-of-return regulation may have been unopposed does not necessarily imply that the only reasonable expectation would be that add-back would apply under price caps as well.⁶

That being the case, to the extent that the implementation of add-back is at all appropriate, the Commission correctly concluded that it could be done only prospectively.

Therefore, MCI's petition for reconsideration should be denied.

Respectfully submitted,



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Dated: June 22, 1995

⁴ MCI at 3.

⁵ See, e.g., Comments of Ameritech and Bell Atlantic filed in response to the Commission's Notice in CC Docket No. 93-179.

⁶ Ameritech is seeking review of the Add-Back Order by the U.S. Court of Appeals for the District of Columbia Circuit both because the application of add-back to earnings under price caps is inappropriate and because the application of add-back to 1994 earnings is impermissibly retroactive.

CERTIFICATE OF SERVICE

I, Deborah L. Thrower do hereby certify that a copy of the foregoing Opposition to Petition for Reconsideration has been served on the parties listed on the attached service list, by first class mail, postage prepaid, on this 22nd day of June 1995.

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